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U.S. Softens Blow of Latest Section 301 Tariffs

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August 14, 2019 - On August 13, 2019, the Trump Administration walked back parts of its plan under Section 301 of the Trade Act of 1974 to impose a 10% tariff – effective September 1, 2019 – on an additional \$300 billion worth of imports from China. Under that plan, the tariff would have covered all of the so-called “List 4” goods, which were goods that had not been covered by the first three tranches of Section 301 tariffs imposed on imports from China.

Under the latest plan as described by the United States Trade Representative (“USTR”), a number of products will be removed from List 4 and the remaining List 4 goods will be divided into two groups. Tariffs will be imposed on the first group on September 1, 2019 and on the second December 15, 2019. The announcement could give the U.S. government more time to negotiate a long-term trade deal with China, prospects for which had looked bleak in light of a stalemate in bilateral talks.

Background

Under Section 301, the President may impose trade restrictions against countries to address unfair trade barriers to U.S. exports or other unjustifiable burdens or restrictions on U.S. commerce. In March 2018, following a Section 301 investigation by USTR, the Administration announced that certain actions against China were justified because Chinese “economic aggression” and unfair trade practices had harmed U.S. interests.

Based on USTR’s determination, the Administration has, to date, imposed three rounds of Section 301 tariffs on imports from China:

- July 6, 2018 – 25% ad valorem duties on \$34 billion of Chinese goods (“List 1”);
- August 23, 2018 – 25% ad valorem duties on \$16 billion of Chinese goods (“List 2”); and
- September 24, 2018 – 10% ad valorem duties on \$200 billion of Chinese goods (“List 3”), which increased to 25% on June 15, 2019. (We previously summarized List 3 tariffs here.)

List 4 Measures – Initial Announcements

On May 17, 2019, USTR published a [Federal Register Notice](#), which provided a list of the goods that were to be subject to the fourth round of Section 301 tariffs. This “List 4” tariff was designed to have a [direct impact](#) on U.S. consumers by increasing prices for such items as clothing, smartphones, toys, and video games. Excluded from the list were pharmaceuticals, pharmaceutical inputs, medical goods, rare earth materials, and critical minerals. The notice allowed for a comment period between May 17, 2019, and June 17, 2019.

On August 1, 2019, President Trump indicated that the List 4 tariff would go into effect on September 1, 2019, starting at 10%. Based on the Federal Register notice, however, the tariff could go as high as 25%.

August 13 Announcement

On August 13, 2019, USTR [announced](#) that it would remove certain products from List 4 “based on health, safety, national security and other factors.” These products include car seats, shipping containers, cranes, Bibles, and other religious literature. In addition, USTR explained that the List 4 tariff on [certain consumer goods](#), such as cell phones, laptop computers, video game consoles, certain toys, computer monitors, and some clothing and footwear, would be delayed until December 15, 2019. President Trump [attributed](#) the delay to a desire to alleviate the impact of the tariff on U.S. consumers during the holiday season. Still, a [large number of goods](#) will be subject to the tariff beginning September 1, 2019, including agricultural and food products, certain apparel, jewelry, musical instruments, and housewares.

USTR confirmed that it would conduct an exclusion process for List 4 goods, which will likely be similar to the procedures established for Lists 1, 2, and 3. These procedures allow U.S. stakeholders to request the exclusion of particular products from coverage by the tariff.

According to the announcement, USTR will soon publish a Federal Register notice with additional details about the imposition of the List 4 tariff.

Why the Latest Shift?

USTR’s public comment and hearing process had seen hundreds of U.S. companies submitting comments and testifying as to the harm the tariff would cause to U.S. businesses, which may have had an impact on the Administration’s thinking. In addition, the latest shift could be intended to mitigate a sharp decline in the U.S. stock market, which [fell dramatically](#) in the days following President Trump’s August 1, 2019, announcement.

If you have questions about developments in regard to the Section 301 tariffs, please contact one of the experienced attorneys in Hughes Hubbard’s International Trade practice.

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